

In the Court of Appeals of the State of Alaska

Gabriel Serradell,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12536**

Order

Date of Notice: **7/29/2019**

Trial Court Case No. **4BE-09-00248CI**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Gabriel Serradell was convicted of second-degree murder. He appeals the superior court's dismissal of his second post-conviction relief application. The briefing is complete.

On appeal, Mr. Serradell is represented by attorney Jason Weiner of the law firm Gazewood and Weiner. In its brief, the State suggests that Mr. Weiner may have a conflict of interest in representing Mr. Serradell.

For the reasons we explain in this order, we direct Mr. Weiner to show cause as to why he does not have a conflict in representing Mr. Serradell in this appeal.

Factual background

To assist Mr. Serradell in litigating his post-conviction relief application, the superior court, pursuant to Alaska Administrative Rule 12(e), appointed attorney Jason Gazewood of the law firm of Gazewood and Weiner to represent Mr. Serradell in

the superior court. Attorney David Allen subsequently entered an appearance and represented Mr. Serradell. According to Mr. Allen's entry of appearance, he was "associated counsel" to Gazewood and Weiner.

Mr. Allen ultimately filed a motion to withdraw from representation and a certificate under Alaska Criminal Rule 35.1(e)(2)(C) that Mr. Serradell's application for post-conviction relief had no arguable merit. (Citing our decision in *Wassilie v. State*, 331 P.3d 1285 (Alaska App. 2014), Mr. Allen asked the superior court to condition his withdrawal on his fulfillment of two additional duties — ascertaining Mr. Serradell's desire to appeal (if the court in fact dismissed Serradell's case), and docketing the notice of appeal if Mr. Serradell wished to do so. *Id.* at 1289.)

The court agreed with Mr. Allen's certificate of no merit; additionally, the court found that Mr. Serradell's application was time-barred. Accordingly, the court dismissed Mr. Serradell's case. *See* Alaska R. Crim. P. 35.1(f)(2).

Mr. Allen subsequently filed a notice of appeal on Mr. Serradell's behalf. The superior court then allowed Mr. Allen to withdraw and appointed attorney Andrew Steiner to represent Serradell on appeal.

But Mr. Steiner later moved to withdraw, after he assumed full-time employment with a prosecutor's office in Oregon. We remanded Mr. Serradell's case to the superior court for appointment of new counsel, and the superior court appointed Mr. Weiner, another lawyer at Gazewood and Weiner. Mr. Weiner filed the appellate briefing on behalf of Mr. Serradell.

In its brief, the State suggests that Mr. Weiner may have a conflict of interest in representing Mr. Serradell. The State notes that, in Mr. Serradell's opening brief, Mr. Weiner suggested that Mr. Allen overlooked colorable issues with respect to the timeliness of Mr. Serradell's application.

In Mr. Serradell's reply brief, Mr. Weiner states that there is no conflict because the "ultimate deficiency in this case was the trial court's lack of inquiry."

Our concerns about Mr. Weiner's possible conflict

Although Mr. Weiner disclaims any conflict, the argument that the superior court failed to conduct a sufficient independent inquiry into at least one of Mr. Serradell's claims rests implicitly on Mr. Allen's failure to bring this argument to the superior court's attention. Although we do not generally address claims of attorney ineffectiveness for the first time on appeal, we have repeatedly reversed trial court's dismissals of post-conviction relief applications under Criminal Rule 35.1(f)(2) when the attorney failed to provide the trial court with a complete and detailed explanation of the defendant's claims. *See Wassilie*, 331 P.3d at 1291 n. 11 (collecting cases).

Mr. Weiner's association with Allen may have limited his willingness or ability to challenge Mr. Allen's representation.

Alaska Professional Conduct Rule 1.7(a)(2) declares that a lawyer shall not represent a client if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a third person or

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by a personal interest of the lawyer.” Additionally, Professional Conduct Rule 1.10(a) declares that lawyers associated in the same firm “shall [not] knowingly represent a client when any one of them practicing alone would be prohibited from doing so” under Rule 1.7. Under these rules, Mr. Weiner’s representation of Mr. Serradell appears to present a conflict of interest.

IT IS THEREFORE ORDERED:

1. Attorney Jason Weiner is ordered to show why he does not have a conflict in representing Mr. Serradell in this appeal.
2. Mr. Weiner’s response to this order to show cause shall be filed on or before Thursday, August 8, 2019.
3. In addition to the normal distribution of this order, the Appellate Clerk’s Office shall serve a copy of this order on Mr. Serradell personally.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Kyle Roberts, Deputy Clerk

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cc: Court of Appeals Judges
Central Staff
Gabriel Serradell

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